IN THE HIGH COURT OF JUDICATURE AT MADRAS.

DATED: 17/10/2003

CORAM

THE HONOURABLE MR.JUSTICE A.K.RAJAN.

WRIT PETITION No.1891 of 1998

Mrs.S.Rosemary. ...Petitioner.

-Vs-

1.The Director of Collegiate
Education, College Road,
Chennai. 600006.

2.The Joint Director of
Collegiate Education,
Vellore Region,
Vellore. 632 006.

3.The Secretary,
Anxilium College,
Gandhi Nagar,
Vellore. 632 006.

4.Sister Alphonsa Mary. ..Respondents.

Writ Petition filed under Article 226 of the Constitution of
India, praying to issue a writ of certiorarified mandamus, as stated therein.

For Petitioner :: Mr.M.Muthupandian.

For Respondents 1 and 2 :: Mr.R.Vijaya Kumar.

Mr.M.Joseph Mathew Jerome... For Respondents
3 and 4.

:ORDER

This writ petition is filed for a writ of certiorarified
mandamus to quash the order of the second respondent and to direct the third
respondent to designate the petitioner as Head of the Department of Chemistry
of the third respondent College.

2.The brief facts that are necessary for the purpose of the disposal of the case is as follows:-

The petitioner joined as Lecturer of Chemistry on 17.6.1970 in the Auxilium College Vellore. She became the senior most Lecturer in the Department in the year 1986. But on that date, the Principal Sister Sesilee Thomas was a teaching staff in the Chemistry Department. Therefore, she was the Head of the Department till her retirement on 14.6 .1993. From 15.6.1993 the present Principal by name Alphonsa was appointed as the Principal. She was working in a different college and she was junior to the writ petitioner herein. But she was brought to this college and was appointed as the Principal of the College on the ground that since she was also a Chemistry Lecturer, she was designated as Head of the Department. But in fact as per the Rules, the senior most Lecturer in the Department should be designated as Head of the Department. Therefore,the petitioner made a representation on 6.1.1994 to the Secretary, Auxilium College and also to the Regional Deputy Director of Collegiate Education to the effect that she being the senior most Lecturer in the Chemistry Department, she is eligible to be nominated as Head of the Department. That was rejected by an undated letter on the ground that the present Principal Sister Alphonsa Mary also belonged to faculty of Chemistry and so, she automatically heads the Department of Chemistry. Hence the question of nominating any one else as the Head of the Department does not arise. Thereafter, writ petitioner made another representation on 15.4.1995 to the Commissioner of Collegiate Education through proper channel. In that she referred to G.O.Ms.No.1785 dated 5.12.1998 and as per the G.O., senior most Lecturer shall be nominated as Head of the Department and on that basis, she wanted her to be appointed as Head of Department of Chemistry. For that, a reply was sent by letter dated 13.1.1997 by the Director of Collegiate Education. In that, it is stated that in so far as the Chemistry Department of the College, the seniority list has not been prepared. Therefore, the Regional Joint Commissioner of Education was directed to fix the seniority in the Department and send it to the Department. Again on 17.6.1997 the Joint Commissioner, Collegiate Education wrote a letter informing that since Alphonsa Mary, who is the Principal is also a Chemistry Graduate, the petitioner cannot be designated as Head of Department. Thereafter, the present writ petition has been filed to quash the impugned order, the second letter dated 17.6.1997.

3.A counter has been filed by the 4th respondent in which it is stated that the College is a religious minority educational institution established and administered by Roman Catholic Congregation of the daughters of Mary Help of Christians. It is purely a charitable and philanthropic institution administering several schools. The third respondent is not merely a private college. It is an educational agency that runs it. It entitles to the protection of Article 30(1) of the Constitution of India and as defined in Section 2(7) of the Tamil Nadu Private Colleges Act and the Rules framed thereunder. It does not receive cent per cent aid for all the staff and there are several teaching and non teaching staff for which no aid is granted. The Government is empowered to frame Rules relating to service conditions of the teachers and the other employees working in this college. No rule restricting the administrative and disciplinary control exercised by this minority educational agency is valid. Any service conditions, which are violative of

Article 30(1) of the Constitution of India are void and non est in law and they cannot be enforced against minority institution; only such of those provisions of the Act and Rules and other directions issued by the Government whi ch are not violative of Article 30(1) of the Constitution of India are applicable to this College. This follows G.O.Ms.No.1785 dated 5.12.1988 in so far as it is not detrimental to the minority rights guaranteed under Article 30(1). The Minority Educational Agency has the right to choose and appoint persons, who possess enough merit and ability and whose ideals , interests and beliefs are compatible with those of the institutions and the educational agency. As per Rule 11 sub clause 4 and sub clause 1 of Tamil Nadu Private Colleges (Regulation) Act 1976, promotion in respect of teaching staff should be made on merit and ability, seniority being considered only where merit and ability are approximately equal. This Rule is also subject to Article 30(1) of the Constitution. The administrative control of the College vests with the Educational Agency and the second respondent was also not empowered to fix seniority among the staff of this college. The 4th respondent, who is the Principal cannot under any circumstance be made to take instructions from the writ petitioner in the Chemistry Department and hence selection of the 4th respondent as Principal and the Head of the Department is perfectly valid and in the interest of the administration of the institution. It will be an anomaly if the Principal of the College is to be subordinate to a staff member of the Department to which she belongs. The Principal as the natural guardian of the college is the natural Head of the Department. If any attempt is made to place the Principal subordinate to the Head of the Department, it would result in loss of status for the Principal which would violate Article 30 of the Constitution. Further, the designation of the Head of the Department is not attached with any monetary benefit but is granted with lesser work load in teaching hours. As such, the Principal being conferred with the said designation of the Head of the Department would be more able to administer the institution and the Department efficiently. If the writ petitioner is designated as Head of Department of Chemistry, the college will have to appoint another Lecturer to fill up the unmanned working hours, which will result in the loss to the college. G.O.Ms.No.1785 is not binding on the third respondent college. It is also a convention in all the colleges that the Principal is also Head of Department to which he/she belongs. In the circumstances, the writ petition deserves to be dismissed.

4. Learned counsel appearing for the petitioner submitted that Clause 4 Sub Clause 7 of G.O.Ms.No.1785 (Education) dated 5.7.1988, reads as follows:

"The senior most person in the Department of College, irrespective of his Ph.D qualification will be nominated and designated as " Senior Lecturer/Selection Grade Lecturer/Reader and Head of Department" by the Director of Collegiate Education and that no special pay will be allowed to that post".

Relying upon this, the learned counsel appearing for the petitioner submitted that the post of the Head of Department does not carry even any monetary benefit and it is only the designation as Head of the Department and that can be given only to the senior most Lecturer in the Department. Admittedly, the

writ petitioner is the senior most lecturer in the Department and therefore, she should have been made as Head of Department of the College. Therefore, the impugned order is liable to be set aside and the writ petition is to be ordered as prayed for.

5. Learned counsel appearing for the respondents submitted that as far as the minority educational institutions is concerned, the administration shall never be jeoparadised. The minority educational institutions have been conferred with the complete administration of the educational institutions. Even in Tamil Nadu Recognised Private Colleges (Regulation) Act 1976, Section 17 provides that the Government may make rules in consulation with the University regulating the number and conditions of service (including promotion, pay, allowances, leave, pension, provident fund, insurance and age of retirement and rights as respects disciplinary matters but excluding qualifications) of the teachers and other persons employed in any private college. But there are decisions of the Supreme Court right from the date of Independence till today ending with the decision in "T.M.A.Pai Foundation . vs. State of Karnataka (2002) Vol.8 S.C.C. 481 . In the latest decision cited above of the Supreme Court by eleven Judges , the rights to appoint teachers and right to appoint Headmasters of the school run by the minorities have been protected. Since it includes within the ambit of administration of the educational institutions, the Government cannot interfere with. In the case of the educational institutions run by the minority agencies, the appointment of Principal or Lecturer cannot be interfered with. Learned counsel also submitted that the appointment of Head of Department is also similar to appointment of the Principal. Just like the Principal, who has to determine and take important decisions, the Head of Department also has to take important decisions with respect to allotment of work and making policy suggestions and other important aspects which fell within the ambit of administration. One of the important duties of the Head of Department is to allocate teaching hours to the faculty and prepare the faculty time table in consultation with the faculty members of the Department. The Head of Department has got the power to assess the work of the teaching staff in the Department. Therefore, inasmuch as Principal also being a Chemistry Lecturer, her work may be assessed by the Head of Department which may be detrimental to the Institution. The Head of Department can also refuse leave to her own Lecturer. Therefore, the Principal can also be refused leave. Inasmuch as the Principal is teaching in the college, the Principal also must be allocated with a time table and lecture hours. If this power is given to the Head of Department, the Principal would be made subord inate to the Head of Department and therefore, such an act would amount to interference with the administration and hence the petitioner cannot be appointed as Head of Department.

6.Learned counsel submitted that the G.O conferred the power to designate the Head of Department on the Director of College Education, which is not also permissible as it amounts to interference with administration. Further, G.O contemplates only appointment of Head of Department, who is the senior most among the Lecturers. But in this case, the

Principal was not the Lecturer in the Department. She cannot be considered as one among the Lecturers and she is above them and therefore, her seniority cannot be compared with the seniority of the writ petitioner. Therefore, the choice of Head of Department cannot be taken away from the educational institutions. In support of this, the learned counsel relied upon the decision in " St.Xaviers College .vs. State of Gujarat" (A.I.R.1974 Supreme Court,1389) wherein paragraph 103 refers to choice of the Teachers and paragraph 183 refers to choice of the Principal. Relying upon the two paragraphs in the judgment, the learned counsel submitted that with respect to the appointment of Lecturers and the appointment of Principal, the Minority Educational Agency has got absolute power. This cannot be taken away in the case of the appointment of Head of Department. Further,the learned counsel referred to another aspect. Though the post was vacant from 1993 onwards, the writ petition was filed only in 1998 and therefore, on the ground of laches alone, the writ pet ition is liable to be dismissed. For all these reasons, the learned counsel for the respondents submitted that the petitioner is not entitled to the relief as prayed for. Further, the learned counsel submitted that this petitioner has already retired from service on 30.9.2003 and her services are extended till 30.5.2004 till the end of the academic year and presently she is employed under re-employment basis till 30.5.2004. Her Service Register has already been completed. Her pension papers have also been sent and therefore, the prayer cannot be allowed for these reasons also.

7. The argument with respect to the assessment of the work of the Principal, which may be made by the Head of Department and the argument that the Head of Department may refuse to grant leave for the Principal are far fetched. By no stretch of imagination such a situation can be concieved. It is also seen that in the "Role of functions of the Head of Department" of the Auxilium College, under the head ' Faculty Competence', it is stated that the Head of Department is available to the Principal. Therefore, the Head of Department cannot on any day over-ride the authority of the Principal and cannot act against the interest of the Principal in the administrative matters including the preparation of time table, granting of leave and assessment of the work of the Principal as a Lecturer of the Chemistry Department. Therefore, this argument of the counsel for the petitioner has no force. Hence it is rejected.

8. On the question of laches, counsel for the respondents relied mainly on the ground that the Principal was appointed from 16.6.1993 and the Principal was also acting as the Head of Department. But no other person was designated as Head of Department. The writ petition has been filed in the year 1998. Therefore, on the ground of laches of more than 4 years the writ petition deserves to be dismissed. This argument of the learned counsel for the respondents is not acceptable in view of the fact that the petitioner has written a letter as early as 6.1.1994 itself and thereafter she has been corresponding continuously through the College with the Director of School Education. Earlier a letter was sent by the Government rejecting her claim. On further representation subsequently another order, which is impugned in this writ petition was passed in the year 1997. The non challenging of 1995 year order does not in any way prevent the petitioner from challenging the present impugned order as the petitioner was corresponding to change that order. Further, in "T.M.A.Pai Foundation .vs. State of Karnataka" ((2002) 8

Supreme Court Case 481), the Supreme Court has categorically held as follows:-

"Q.5(c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/ withdrawal thereof, and appointment of staff, employees, teachers and principals including their service conditions and regulation of fees, etc. would interfere with the right of administration of minorities?

A. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as the conditions of affiliation to a university or board have to be complied with, but in the matter of day-to-day management, like the appointment of staff, teaching and non-teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself.

For redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service, a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be presided over by a judicial officer of the rank of District Judge.

The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a Principal of any educational institution. Further regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State, without interfering with the overall administrative control of the management over the staff".

The latest verdict of the Supreme Court as stated above would clearly show that the regulations can be framed for governing service conditions for teaching and other staff promotion and designation of the post is also one of the service conditions.

9.The Division Bench of this Court in "The Principal and Secretary Madras Christian College East Tambaram, Madras 59 and another .vs. Dr. (Mrs.) M.Shams and another" (2001 (2) CTC 84) has held as follows:-
"Therefore in the light of the said pronouncement having accepted the grant subject to the conditions, and the post being only a designated one which has to be done by the Director of Collegiate Education, it follows that the first appellant herein is bound to follow the rule of seniority as has been ordered in this case. Hence, we do not find any infirmity in the order passed by the learned single Judge and we also hasten to add that it is unnecessary to go into any other contentions".

10.In this case the Division Bench has held that G.O.Ms.No.1785 dated 5.12.1988 is not applicable to the minority educational institutions. Without going into the aspect as to whether this decision could be valid after the decision in T.M.A.Pai Foundation case (2002 (8) Supreme Court Cases 481) and even assuming that this decision is correct and the G.O. is not applicable to the minority educational institutions, still this court in the same judgment has held that the office of the Head of Department being only a designated one and which has to be done by the Directorate of Collegiate Education, the minority educational institution also is bound to follow the rules of seniority. Therefore, the Auxilium College is bound to follow the rules of seniority.

11.Learned counsel appearing for the respondents submitted that the decision in 2001(2) CTC 84 was given by the Division Bench relying upon the decision of the Supreme Court in "Unni Krishnan, J.P .vs. State of A.P." (A.I.R.1993 SC 2178); Inasmuch as Unni Krishnan's case has been over-ruled by the Supreme Court in (T.M.A.Pai) 2002(8) SCC 48 1, this decision cannot be said to be correct and the decision has to be ignored. This argument of the learned counsel for the respondents is not acceptable. Unni Krishnan's case was referred to in this case only with respect to administrative control of the educational institution. Further, the Head of the Department is not a promotional post. It does not carry any special pay. Only the senior most person is to be nominated and designated as Head of Department. Therefore, inasmuch as this designation of the senior most faculty member as Head of Department, which does not involve any financial commitment, the benefit cannot be denied to the person, who is actually the senior most in the faculty of Chemistry. Learned counsel mainly relies upon the fact that earlier the former Principal Sister Sesilee Thomas was Principal as well as Head of Department of the Chemistry. Therefore, when the Principal belongs to a faculty, that Department does not require another Head of Department. In that case, the Principal was also the senior most Lecturer. Therefore, the question of appointing the next senior most Lecturer as Head of Department did not arise. But in the present case, admittedly the present Principal was junior to the writ petitioner and she was working in some other institution under the control of educational agency and she was transferred to the Auxilium college and made as a Principal. Therefore, as between the present incumbent namely Sister Alphonsa Mary and Rosemary the petitioner, the seniority in the Chemistry Department plays a vital part. Therefore, inasmuch as the writ petitioner Rosemary is the senior most faculty member, she should have been designated as Head of Department from the date when sister Alphonsa Mary was appointed as Principal.

12.The exaggerated concept of 'Minority Rights' enunciated over enthusiastically during 1950 which created a myth that minority Educational Institutions based on language or religion are above law of the land and cannot be regulated by any law was rightly discarded by the recent Eleven Judges' Bench of the Supreme Court in T.M.A.Pai Foundation Vs. State of Karnataka ((2002)8 Supreme Court Cases 481); earlier there was an opinion that the minority institutions are not bound by any of the regulations. Later, by number of decisions rendered by the Supreme Court, the law relating to service, Labour, etc., were extended; by the latest pronouncement, the Supreme Court has held all those minority institutions which receives grant from the government are bound to obey all the rules made by the Government.

That is except for such of those matters which directly affects the Management of the institution, all other acts including the service regulations can be regulated by law. Nominating the senior most lecturer as the Head of the Department does not in any way interfere with the right of the Management of the educational institutions. The Supreme Court has also categorically held that appointment of Principal cannot be regulated except for prescribing standards and qualifications. Similarly appointment of lecturers also cannot be interfered with. But, once appointed, they are bound to obey the regulations with respect to service matters made by law. Making regulations relating to nomination of Head of the Department cannot be equated with appointment of Principal or appointment of Lecturer or admission to students which alone can be said to be matters relating to administration. Therefore, nominating a Senior most lecturer in a faculty as Head of the Department does not interfere with the administration of the Educational Institutions. Therefore, the fact that the Director of Collegiate Education has been empowered with fixing of seniority or nominating Head of the Department cannot be said to be an interference with the administration. In fact, there is no seniority list in the Chemistry Department in this College and as seen from the communication sent by the Director of Collegiate Education; that shows how the rules framed by the Government even with respect to ordinary matters relating to services like fixing of seniority has been disobeyed or not followed by the minority educational institutions. It is high time that the minority educational institutions change their mind and attitude and obey the laws made by the Legislature and Parliament in letter and spirit.

13.The mere fact that the writ petitioner has already retired from service on 30.9.2003 and she is now in extended service till the end of the academic year, does not in any way affect the right of the petitioner to be designated as Head of Department. By no stretch of imagination, this designation of the writ petitioner as Head of Department can be said to affect the administration of the Educational Institution. Therefore, the petitioner herein shall be designated as the Head of the Chemistry Department retrospectively from the date on which Sister Sessilee Thomas retired from service.

14.In the result, the Writ Petition is allowed as prayed for.
No costs.

Index:Yes
Website:Yes

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To

1.The Director of Collegiate

Education, College Road,
Chennai. 600006.

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